

7 Official Opinions of the Compliance Board 101 (2011)

Administrative Function – Within Exclusion – Discussion of School Board’s election of its own officers

March 10, 2011

Complainant:

Allen Dyer, Esquire

Howard Co. Board of Education

Respondent:

Howard Co. Board of Education

The Open Meetings Compliance Board has considered your complaint that the Howard County Board of Education (“County Board”) violated the Open Meetings Act by electing its chair by secret ballot in a public meeting. You argue that the Act required the disclosure of each member’s vote. The County Board responds that the County Board’s election of its chair was an administrative act to which the Act does not apply.

We conclude that the County Board’s election of its chair was an administrative act not subject to the Act. Whether the alleged election violated any other law is beyond this Board’s authority.¹ Further, because we conclude that the Act does not apply to the election you alleged, we do not reach the question of whether secret balloting is proper generally.

I

Complaint and Response

In your December 3, 2010 complaint, you requested the Board’s prospective view on whether the County Board would violate the Act by electing its new chair and vice-chair by secret ballot during an open meeting

¹ Section 10-504 of the State Government Article (“SG”) provides that when “[the Act] and another law that relates to meetings of public bodies conflict, [the Act] applies unless the other law is more stringent.” However, §10-504 applies only when the Act applies. Because we have decided that the Act does not apply, we need not discuss any potential conflict with other laws. *See, e. g.* § 3-704 (b) and (c) of the Education Article (requiring that all actions taken by a Board in a public meeting “be made public” and that closed sessions be conducted in accordance with § 10-508 of the Act).

on December 6, 2010. You alleged that on November 18, 2010, the County Board had adopted an election procedure by which voting for the positions would be “[done] by secret ballot if more than one person is nominated for each office.” You provided the Board with cases in which out-of-State courts generally equated secret balloting during a public meeting with closed-session balloting and held that the secret balloting violated the applicable open government laws.

The Board decided not to issue an opinion on an expedited basis, treated your request as a regular complaint, and requested that you send it to the County Board for its response. The County Board responded that its election of its own officers is an administrative function and is not a legislative, quasi-legislative, or other function to which the Act would apply. Neither party has provided the Board with information on whether the election actually occurred and occurred in the manner you alleged beforehand. We shall address your complaint on the assumption that the County Board not only complied with the mandate in § 3-702 of the Education Article to “elect a chairman from among its members” at its first meeting in December but also conducted the vote according to the procedures adopted on November 18.

II

Discussion

The threshold question raised by the County Board is whether the Act applies to the County Board’s election of its own officers. The Open Meeting Act, §§ 10-501 *et seq.* of the State Government Article (“SG”), “does not apply to ... a public body when it is carrying out ... an administrative function...,” unless the public body is meeting to consider granting a license or permit or certain land use matters. SG §10-503(a)(1)(I) and (b). The County Board’s election did not involve licenses, permits, or land-use matters, and so the inquiry becomes whether the County Board was carrying out an administrative function when it elected its officers.

The Act defines “administrative function” as “the administration of (i) a law of the State; (ii) a law of a political subdivision of the State; or (iii) a rule, regulation, or bylaw of a public body.” SG § 10-502(b). The Act further specifies that the term “administrative function” does not include advisory, judicial, legislative, quasi-judicial, or quasi-legislative functions. SG § 10-502(b). Thus, if the public entity’s “discussion is not encompassed by any of [the excluded] functions...and involves ‘the administration of’ existing law, it

falls within the [administrative] function exclusion.” 3 *OMCB* 39, 40 (2000). With respect to the nature of the function, we have concluded in earlier opinions that “the process by which a public body makes an appointment, as distinct from the process of confirming an appointment made by someone else,” *id.*, is administrative in nature and does not fall within the other functions. Thus, in 1 *OMCB* 123 (1995), we found a school board’s discussions on whom to appoint acting superintendent to be administrative and not legislative. Similarly, in 3 *OMCB*, *supra* at 43, we concluded that the County Board was exercising a solely administrative function when it chose one of its members to attend a conference. There, we categorized as “housekeeping matters” those “administrative matters dealing with operations of the County Board that do not constitute other functions or policy decisions.” *Id.* See also 3 *OMCB* 278, 281 (2003) (finding that Commissioners’ discussion of whom to appoint to County Boards was excluded from the Act because “the making of an appointment is an executive function...”); 2 *OMCB* 45,47 (1999) (finding that County Commissioners’ discussion of whom to appoint to the Planning Commission was an executive, or administrative, function not subject to the act); 1 *OMCB* 252, 253-54 (1997) (finding that a town council’s discussion of whom to appoint to a Council vacancy was an executive, not legislative, function). In our view, a Board’s selection of its own officers should not be treated differently.

Further, we have concluded in the past that a public entity’s fulfillment of a statutory duty to appoint a person to a certain position constitutes “the administration of an existing law.” For example, we concluded in 1 *OMCB* 123 that the school board was solely administering a law when, required by § 4-201 of the Education Article to appoint a superintendent, it considered whom to name as an Acting Superintendent. *Id.* at 125; *see also* 1 *OMCB* 252, 254 (stating that a town council was merely implementing its charter when it discussed filling a Council vacancy). Here, the County Board’s election of its chair was required by § 3-702 of the Education Article. We conclude that its conduct of that election fell into the “housekeeping” category of administrative functions and was not subject to the Act.

III

Conclusion

The Act did not apply to the alleged facts, and we therefore find no violation.

OPEN MEETINGS COMPLIANCE BOARD

Elizabeth L. Nilson, Esquire

Courtney J. McKeldin

Julio A. Morales, Esquire